

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2021-153-S

IN RE:)	SOUTH CAROLINA OFFICE OF
Application of Palmetto Wastewater)	REGULATORY STAFF'S REPLY IN
Reclamation, Incorporated for an Adjustment of)	SUPPORT OF ITS MOTION TO
Rates and Charges)	COMPEL PRODUCTION OF
_____)	DOCUMENTS AND THINGS

On September 7, 2021, the South Carolina Office of Regulatory Staff, pursuant to S.C. Code Ann. §§ 58-4-55, 58-5-230, S.C. Code Ann. Regs. 103-517, 103-833.A, and Rules 26, 34, and 37 of the South Carolina Rules of Civil Procedure, filed a motion for an order compelling Palmetto Wastewater Reclamation, Inc. ("PWR" or the "Company") to provide the materials for 2019 sought in Requests 6-7 and 6-8 of ORS's Sixth and Continuing Request for Books, Records, and Other Information ("Motion"). Request 6-7 asked for copies of the minutes of SouthWest Water Company's ("SWWC") Board of Directors ("Board") meetings that occurred in calendar years 2019, 2020, and 2021.¹ Request 6-8 asked for copies of all presentations made to SWWC's Board during calendar years 2019, 2020, and 2021. PWR has produced the materials requested for 2020 with certain redactions. PWR, on September 17, 2021, filed a Return to the Motion to Compel ("Return"). ORS hereby submits this Reply to PWR's Return.

¹ In a footnote to its Return to the Motion to Compel, PWR states that SWWC is not a public utility subject to the Public Service Commission's jurisdiction or regulation and that it has heretofore voluntarily made requested documents available to PWR. ORS contests any argument that SWWC is not obligated to produce relevant information in this proceeding. Regardless, no jurisdictional objection was made in any of PWR's responses to ORS regarding Requests 6-7 and 6-8 and PWR pursues no such objection in its Return.

ARGUMENT

In the Motion to Compel, ORS relied not only on the standard rules for discovery set forth in the South Carolina Rules of Civil Procedure and Public Service Commission of South Carolina (“Commission”) Regulation 103-517 but also other relevant statutes that accord ORS unique investigatory powers, including S.C. Code Ann. §§ 58-4-55 and 58-5-230. ORS is charged by statute with the duty and responsibility to “when considered necessary by the Executive Director of [ORS] and in the public interest, review, investigate, and make appropriate recommendations to the commission with respect to the rates charged or proposed to be charged by any public utility.” S.C. Code Ann. § 58-4-50(A)(1). PWR’s Return applies only Rule 26(b) of the South Carolina Rules of Civil Procedure. Even assuming that is the applicable standard, ORS’s Requests 6-7 and 6-8 meet that standard.

Under Rule 26(b)(1), “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action” S.C. R. Civ. P. 26(b)(1). “It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” *Id.* “In South Carolina the scope of discovery is very broad and ‘an objection on relevance grounds is likely to limit only the most excessive discovery request.’” *Samples v. Mitchell*, 329 S.C. 105, 110, 495 S.E.2d 213, 215 (Ct. App. 1997) (quoting J. Flanagan, *South Carolina Civil Procedure* 216 (2d ed.1996); see also *Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep’t of Health & Env’tl Control*, 387 S.C. 380, 387, 692 S.E.2d 920, 924 (2010) (“We are keenly aware that the scope of discovery is broad.”). While PWR asserts in its Return that “[c]ritically, the ORS has failed to articulate any compelling reason demonstrating its need for the 2019 Materials,” such a showing is not required under the Rule 26(b)(1) standard. PWR’s Return, p. 4.

PWR argues the Board minutes and presentations from 2019 are not relevant because SWWC did not own PWR in 2019 and because PWR's application for rate adjustment in this proceeding relies upon a 2020 test year. PWR's Return, p. 4. The Commission should reject these arguments and order production of the 2019 materials. SWWC allocates costs for products or shared services provided by SWWC to its affiliates such as PWR. Mujeeb Hafeez Direct, p. 4, lines 22-23. One of the principles SWWC asserts guides its allocation of costs for products and services provided by SWWC is, to the extent practicable, to allocate costs directly to the entity that procures any specific service. *Id.* p. 4, lines 16-17; p. 5, lines 1-2. However, there are also indirect costs that SWWC asserts are so general in nature as to require prorations based on a combination of factors. *Id.* p. 5, lines 17-19. PWR asserts these indirect costs are essential in providing effective utility service. *Id.* p. 6, lines 1-4. One such indirect cost is the executive function of which SWWC's Board of Directors is a part. *Id.* p. 6, lines 1-4; p. 7, lines 9-13. The executive function is "responsible for providing strategic vision and guidance, business strategy and development, executive management and oversight, and the overall direction of the company." *Id.* p. 7, lines 9-11.

The Board minutes and presentations for 2019 requested are relevant and reasonably calculated to lead to discoverable evidence. Board minutes and presentations to the Board generally provide information on a number of subjects, including operational decisions, issues, problems, and challenges discussed by the SWWC Board such as operation and capital expenditure needs; projected organic growth and growth via acquisitions; operational changes such as outsourcing and insourcing; potential changes to expenses such as new vendors, centralized purchasing, and changes to employee benefit plans; changes to capital structure such as new debt filings or capital infusions; and potential litigation. The Board's decisions on matters such as these

in turn impact the rates and service of subsidiary utilities under the control of SWWC, including PWR.

Furthermore, Requests 6-7 and 6-8 are reasonable in scope. ORS initially requested only three years of materials, and the relevance of the 2019 Board minutes and presentations has been discussed previously. Moreover, the ORS decision to not limit the Requests to only instances where PWR or its then corporate parent are referenced is reasonably expected to aid in the ORS determination of whether the corporate allocations were made appropriately. The Company should not be permitted to choose the portions of the 2019 Board minutes and presentations it produces and limit the production to only portions that reference PWR or PWR's then corporate parents in 2019. 2019 was the year prior to the test year, and while SWWC did not own PWR or its then parent company in 2019, PWR's parent entity in 2019 is referenced in the heavily redacted three pages of materials from 2019 PWR produced. Regardless of whether PWR or its 2019 parent entities are referenced extensively in the 2019 minutes and presentations, the strategic vision, business strategy and development, and executive management and oversight employed by the Board in 2019 undoubtedly had impacts into 2020 and beyond for subsidiaries SWWC owned in 2019 and companies it acquired the following year. In addition, decisions made in 2019 potentially impact operations going forward and the expenses at the SWWC level and other intermediate levels in 2020 ultimately proposed to be allocated to subsidiaries such as PWR.

The case law PWR cites in its Return is inapposite to the Requests at issue in ORS's Motion. *Oncology & Hematology Assocs. of S.C., LLC v. S.C. Department of Health and Environmental Control* was a certificate of need proceeding and involved a series of discovery requests, which the South Carolina Supreme Court held to be "abusive" and "beyond the pale," served by one healthcare provider on another provider with which it was fiercely competitive.

Oncology & Hematology Assocs. of S.C., 387 S.C. at 381-85, 387, 692 S.E. 2d at 921-24. The Texas Supreme Court opinion the South Carolina Supreme Court quoted favorably in *Oncology & Hematology Assocs. of S.C.* involved a plaintiff who claimed injury due to workplace exposure to benzene and other carcinogenic chemicals and sought thirty years' worth of certain information. *In re CSX Corp.*, 124 S.W.3d 149 (Tex. 2003).

Finally, PWR asserts that ORS seeks production of the 2019 minutes and presentations "without any limitations whatsoever." PWR's Return, p. 3. However, ORS does not object to redactions to the extent the materials contain communications subject to the attorney-client privilege and a privilege log is provided. *See* S.C. R. Civ. P. 26(b)(5)(A). In addition, PWR also has the option to place appropriate confidentiality designations on materials it asserts are confidential.

CONCLUSION

Unlike the discovery requests at issue in the case law cited by PWR in its Return, ORS's Requests at issue are reasonably tailored, appropriate, and seek information that is reasonably calculated to lead to the discovery of admissible evidence. For the reasons set forth herein, in ORS's other written submissions regarding this issue, and in any oral argument heard by the Commission, ORS respectfully requests that the Commission issue an order compelling PWR to produce the materials for 2019 sought in Requests 6-7 and 6-8 of ORS's Sixth and Continuing Request for Books, Records, and Other Information.

SIGNATURE ON FOLLOWING PAGE

Respectfully submitted,



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